

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KARL STORZ ENDOSCOPY-AMERICA,
INC.,

Plaintiff,

v.

STRYKER CORPORATION and STRYKER
COMMUNICATIONS, INC.,

Defendants.

Case No. C 14-00876 RS

PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS,
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal

entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement

1 or order.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 4 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 6 defenses in this action, with or without prejudice; and (2) final judgment herein after the
 7 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 8 including the time limits for filing any motions or applications for extension of time pursuant to
 9 applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 12 Non-Party that designates information or items for protection under this Order must take care to
 13 limit any such designation to specific material that qualifies under the appropriate standards. To the
 14 extent it is practical to do so, the Designating Party must designate for protection only those parts
 15 of material, documents, items, or oral or written communications that qualify – so that other
 16 portions of the material, documents, items, or communications for which protection is not
 17 warranted are not swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 20 encumber or retard the case development process or to impose unnecessary expenses and burdens
 21 on other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for
 23 protection do not qualify for protection at all or do not qualify for the level of protection initially
 24 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
 25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 27 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 28 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so

1 designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but
4 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
5 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” to each page that contains protected material. If only a portion or portions of the material
7 on a page qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
9 portion, the level of protection being asserted.

10 A Party or Non-Party that makes original documents or materials available for inspection
11 need not designate them for protection until after the inspecting Party has indicated which material
12 it would like copied and produced. During the inspection and before the designation, all of the
13 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
15 copied and produced, the Producing Party must determine which documents, or portions thereof,
16 qualify for protection under this Order. Then, before producing the specified documents, the
17 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.
19 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
20 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
21 margins) and must specify, for each portion, the level of protection being asserted.

22 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
23 Designating Party identify on the record, before the close of the deposition, hearing, or other
24 proceeding, all protected testimony and specify the level of protection being asserted. When it is
25 impractical to identify separately each portion of testimony that is entitled to protection and it
26 appears that substantial portions of the testimony may qualify for protection, the Designating Party
27 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
28 to have up to 21 days after receipt of the rough transcript to identify the specific portions of the

1 testimony as to which protection is sought and to specify the level of protection being asserted.
 2 Only those portions of the testimony that are appropriately designated for protection within the 21
 3 days shall be covered by the provisions of this Protective Order. Alternatively, a Designating Party
 4 may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that
 5 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 6 ATTORNEYS’ EYES ONLY.”

7 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 8 other proceeding to include Protected Material so that the other parties can ensure that only
 9 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 10 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 11 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 12 – ATTORNEYS’ EYES ONLY.”

13 Transcripts containing Protected Material shall have an obvious legend on the title page that
 14 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 15 (including line numbers as appropriate) that have been designated as Protected Material and the
 16 level of protection being asserted by the Designating Party. The Designating Party shall inform the
 17 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
 18 day period for designation shall be treated during that period as if it had been designated “HIGHLY
 19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
 20 the expiration of that period, the transcript shall be treated only as actually designated.

21 (c) for information produced in some form other than documentary and for any
 22 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 23 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 24 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
 25 the information or item warrant protection, the Producing Party, to the extent practicable, shall
 26 identify the protected portion(s) and specify the level of protection being asserted.

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
3 in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
12 by providing written notice of each designation it is challenging and describing the basis for each
13 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
15 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
16 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
17 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
18 Party must explain the basis for its belief that the confidentiality designation was not proper and
19 must give the Designating Party an opportunity to review the designated material, to reconsider the
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
21 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
22 has engaged in this meet and confer process first or establishes that the Designating Party is
23 unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
27
28

the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

¹ The burden to move shall shift to the Challenging Party after four challenges are made to avoid an abuse of the process. The burden of persuasion remains on the Designating Party.

1 Protected Material must be stored and maintained by a Receiving Party at a location and in
2 a secure manner that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated "CONFIDENTIAL" only to:

6 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 (b) the officers, directors, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
11 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation, who have signed the "Acknowledgment and Agreement to
14 Be Bound" (Exhibit A), and who have been disclosed pursuant to paragraph 7.4(a);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, and Professional Vendors to whom disclosure is
17 reasonably necessary for this litigation;

18 (f) professional jury or trial consultants, graphics vendors, and mock jurors to whom
19 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
20 and Agreement to Be Bound" (Exhibit A);

21 (g) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
23 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
25 separately bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this Protective Order; and

27 (h) the author or recipient of a document containing the information, employee of
28 the Designating Party, or a custodian or other person who otherwise possessed or knew the

1 information.

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 3 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
 4 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
 5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 8 information for this litigation;

9 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for
 10 this litigation, who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 11 and who have been disclosed pursuant to paragraph 7.4(a);

12 (c) the court and its personnel;

13 (d) court reporters and their staff, and Professional Vendors to whom disclosure is
 14 reasonably necessary for this litigation;

15 (e) professional jury or trial consultants, graphics vendors, and mock jurors to whom
 16 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
 17 and Agreement to Be Bound” (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
 19 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 20 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
 21 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
 22 bound by the court reporter and may not be disclosed to anyone except as permitted under this
 23 Protective Order; and

24 (g) the author or recipient of a document containing the information, employee of
 25 the Designating Party, or a custodian or other person who otherwise possessed or knew the
 26 information.

27 7.4 Procedures for Approving or Objecting to Disclosure of “Protected Material” to
 28 Experts.

1 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
2 Party, a Party that seeks to disclose Protected Material to an Expert (as defined in this Order) first
3 must make a written request to the Designating Party that (1) sets forth its desire to disclose
4 Protected Material to the Expert; (2) identifies the general categories of Protected Material the
5 Receiving Party seeks to disclose to the Expert; (3) sets forth the full name of the Expert and the
6 city and state of his or her primary residence; (4) attaches a copy of the Expert's current resume;
7 (5) identifies the Expert's current employer(s); (6) identifies each person or entity from whom the
8 Expert has received compensation or funding for work in his or her areas of expertise or to whom
9 the expert has provided professional services, including in connection with a litigation, at any time
10 during the preceding five years;² and (7) identifies (by name and number of the case, filing date,
11 and location of court) any litigation in connection with which the Expert has offered expert
12 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
13 preceding five years.

14 (b) A Party that makes a request and provides the information specified in the
15 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
16 within 14 days of delivering the request, the Party receives a written objection from the
17 Designating Party. Any such objection must set forth in detail the grounds on which it is based, and
18 cannot merely challenge the qualifications of the Expert.

19 (c) A Party that receives a timely written objection must meet and confer with the
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
21 within 7 days of the written objection. If no agreement is reached, the Party seeking to make the
22 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
23 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
24 motion must describe the circumstances with specificity, set forth in detail the reasons why the
25 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would

26
27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who receives access to information marked "HIGHLY CONFIDENTIAL – SUBJECT TO PATENT PROSECUTION BAR" shall not be involved in the prosecution of patents or patent applications relating to the subject matter of this action, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.³ To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – SUBJECT TO PATENT PROSECUTION BAR" information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that

³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall include
 4 a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 6 the other litigation that some or all of the material covered by the subpoena or order is subject to
 7 this Protective Order. Such notification shall include a copy of this Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 9 Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with the
 11 subpoena or court order shall not produce any information designated in this action as
 12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
 13 determination by the court from which the subpoena or order issued, unless the Party has obtained
 14 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
 15 seeking protection in that court of its confidential material – and nothing in these provisions should
 16 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
 17 directive from another court.

18 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 19 LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-
 21 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 22 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this
 23 litigation is protected by the remedies and relief provided by this Order. Nothing in these
 24 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce
 26 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement
 27 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

28 1. promptly notify in writing the Requesting Party and the Non-Party that some

1 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2 2. promptly provide the Non-Party with a copy of the Protective Order in this
3 litigation, the relevant discovery request(s), and a reasonably specific description of the
4 information requested; and

5 3. make the information requested available for inspection by the Non-Party.

6 (c) If the Non-Party fails to object or seek a protective order from this court
7 within 14 days of receiving the notice and accompanying information, the Receiving Party may
8 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
9 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
10 possession or control that is subject to the confidentiality agreement with the Non-Party before a
11 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
12 burden and expense of seeking protection in this court of its Protected Material.

13 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this Protective Order,
16 the Receiving Party must immediately (a) notify in writing the Designating Party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
18 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
19 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
20 Agreement to Be Bound" that is attached hereto as Exhibit A.

21 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). If information
26 is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation
27 material, the party making the claim may notify any party that received the information of the
28 claim and the basis for it. After being notified, a party must promptly return or destroy the

1 specified information and any copies it has and may not sequester, use or disclose the information
2 until the claim is resolved. This includes a restriction against presenting the information to the
3 court for a determination of the claim. This provision is not intended to modify whatever procedure
4 may be established in an e-discovery order that provides for production without prior privilege
5 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
6 agreement on the effect of disclosure of a communication or information covered by the attorney-
7 client privilege or work product protection, the parties may incorporate their agreement in the
8 stipulated protective order submitted to the court.

9 13. MISCELLANEOUS

10 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
11 seek its modification by the court in the future.

12 13.2 Right to Assert Other Objections. By entry of this Protective Order no Party waives
13 any right it otherwise would have to object to disclosing or producing any information or item on
14 any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on
15 any ground to use in evidence of any of the material covered by this Protective Order.

16 13.3 Filing Protected Material. Without written permission from the Designating Party or
17 a court order secured after appropriate notice to all interested persons, a Party may not file in the
18 public record in this action any Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
20 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
21 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
22 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
23 to protection under the law. If a Receiving Party's request to file Protected Material under seal
24 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
25 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
26 instructed by the court.

27 14. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in paragraph 4,

1 each Receiving Party must return all Protected Material to the Producing Party or destroy such
 2 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 3 compilations, summaries, and any other format reproducing or capturing any of the Protected
 4 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
 5 a written certification to the Producing Party (and, if not the same person or entity, to the
 6 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
 7 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 8 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 9 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 11 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 12 product, and consultant and expert work product, even if such materials contain Protected Material.
 13 Any such archival copies that contain or constitute Protected Material remain subject to this
 14 Protective Order as set forth in Section 4 (DURATION).

15
 16
 17
 18
 19 IT IS SO ORDERED.

20 DATED: February 4, 2015

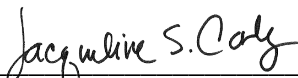

 21 Honorable ~~Richard G. Seeborg~~ Jacqueline Scott Corley
 22 United States ~~District~~ Judge
 23 Magistrate
 24
 25
 26
 27
 28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Protective Order that was
 issued by the United States District Court for the Northern District of California on
 _____ [date] in the case of Karl Storz Endoscopy-America, Inc. v. Stryker
 Corporation et al., Case No. C 14-00876 RS. I agree to comply with and to be bound by all the
 terms of this Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
 not disclose in any manner any information or item that is subject to this Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Protective Order, even
 if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]